

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 18-03495 JCH
	)	
<b>DOUGLAS D. SMITH,</b>	)	
	)	
Defendant.	)	

THE UNITED STATES' RESPONSE TO DEFENDANT'S OBJECTION TO  
GOVERNMENT'S EXHIBIT 35 (DOC. 195)

The United States hereby responds in opposition to Defendant's objection to its Exhibit 35 and likely Exhibit 34, the recording associated with Exhibit 35. Although Defendant did not specifically object to the recorded statement in Exhibit 34, Exhibit 35 is the transcript based on this recording.

First and foremost, the United States' Exhibit 35 is in compliance with the Court's order regarding this specific passage. Defendant has already strenuously argued for admission of this passage as an excited utterance. Doc 135-2 at 15. The Court determined this statement was not admissible as an excited utterance. Doc. 148 at 7. Defendant is not entitled to introduce self-serving statements under the hearsay rule. Yet, the Court ordered this statement could be admitted if the United States sought to admit Tr. 15:20-21 and 16:9-25. *Id.* at 8. Being cognizant of the Court's order, the United States has redacted all of page 15 and page 16 of the transcript. In doing so, the United States does not run afoul of the Court's order and both exhibits 34 and 35 are admissible.

Defendant's effort to relitigate this issue, which the Court has already clearly decided, is just another unrelenting effort to improperly introduce his self-serving statements. Defendant

argues that this portion is needed to explain the diagram (Doc. 194 at 4), which is also untrue. Much of page 28 is unredacted and includes the discussion while Defendant draws. Page 29 is not redacted whatsoever and most of page 30 is not redacted. This discussion is independent of Defendant's self-serving assertions. The United States has complied with the Court's order as it relates to his statement in this particular passage.

On a practical note, the United States has prepared a number of exhibit binders for the parties and the jury for the trial starting on Monday. The United States is prepared to admit both exhibits 34 and 35 as submitted. The United States respectfully requests this issue be addressed on Monday morning, given the amount of preparation required to change both exhibits should the Court sustain Defendant's objection.

Respectfully submitted,

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Electronically filed on 06/11/21  
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a copy of this filing to be sent to counsel for Defendant.

/s/  
NOVALINE D. WILSON  
Assistant United States Attorney